

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

SURF MOORE

PLAINTIFF

VERSUS

CIVIL ACTION NO. 3:12cv739-TSL-JMR

C.F. MOORE CONSTRUCTION CO.

DEFENDANT

REPORT AND RECOMMENDATION

This matter is before the Court on motion [2] of the plaintiff to proceed *in forma pauperis* [IFP] for the purpose of filing this civil action. The granting or denying of IFP proceedings of a civil nature is left to the sound discretion of the District Court. *Bass v. Parkwood Hosp.*, 180 F.3d 234, 240 (5th Cir. 1999). Leave to proceed IFP is a privilege, not a right. *Carter v. Thomas*, 527 F.2d 1332, 1333 (5th Cir. 1976). It is true that “the poor should have access to our courts . . . [b]ut something more than the mere statement and an affidavit that a man is ‘poor’ should be required before a claimant is allowed to proceed *in forma pauperis*.” *Evensky v. Wright*, 45 F.R.D. 506, 507-8 (N.D. Miss. 1968). “There is authority for the proposition that the privilege of proceeding *in forma pauperis* in civil actions for damages should be allowed only in exceptional circumstances.” *Id.* at 507 (citing *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir. 1963)).

The Court, having examined the application and affidavit submitted, is of the opinion that plaintiff's motion to proceed IFP is not well taken and should be denied. The Court recommends that the Plaintiff must pay the required filing fees to the Clerk of Court for the Southern District of Mississippi, Jackson Division, United States Courthouse, 501 E. Court Street, Suite 2.500, Jackson, Mississippi, 39201 within 20 days from the date of entry of this order, or by no later than March 4, 2013. If the filing fee is paid by the Plaintiff or someone other than the Plaintiff,

there must be a written explanation that the money is being submitted as payment for the filing fee in this case, Civil Action No. 3:12cv739-TSL-JMR, on behalf of the Plaintiff, Surf Moore.

In addition, the Court further recommends that if the filing fee is not received within the period specified above, this matter will be dismissed without further notice to the Plaintiff.

Therefore, it is,

RECOMMENDED that the Plaintiff's Motion [2] for Leave to Proceed IFP be denied. It is further,

RECOMMENDED that the Plaintiff must pay the required filing fees to the Clerk of Court for the Southern District of Mississippi, Jackson Division, United States Courthouse, 501 E. Court Street, Suite 2.500, Jackson, Mississippi, 39201 within 20 days from the date of entry of this order, or by no later than March 4, 2013. If the filing fee is paid by the Plaintiff or someone other than the Plaintiff, there must be a written explanation that the money is being submitted as payment for the filing fee in this case, Civil Action No. 3:12cv739-TSL-JMR, on behalf of the Plaintiff, Surf Moore. It is further,

RECOMMENDED that if the filing fee is not received within the period specified above, this matter will be dismissed without further notice to the Plaintiff. It is further,

In accordance with the Rules of this Court, any party, within fourteen days after being served a copy of this recommendation, or by no later than February 25, 2013, may serve and file written objections to the recommendations, with a copy to the District Judge, the U.S. Magistrate Judge, and the opposing party. The District Judge at that time may accept, reject or modify in whole or in part, the recommendation of the Magistrate Judge, or may receive further evidence or recommit the matter to this Court with instructions. Failure to timely file written objections to proposed findings, conclusions and recommendations contained in this report will bar an

aggrieved party, except on the grounds of plain error, from attacking on appeal, unobjected to proposed factual findings and legal conclusions accepted by the District Court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–9 (5th Cir. 1996) (*en banc*), *superceded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). A copy of this Report and Recommendation has been forwarded to Plaintiff at his last known address by certified mail, return receipt requested.

THIS the 11th day of February, 2013.

s/ John M. Roper, Sr.
CHIEF UNITED STATES MAGISTRATE JUDGE